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Dated: March 17, 2006

Signature:

Sophie M. Bolt
(Sophie M. Bolt)

Docket No.: 17170/008001
(PATENT)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
Zeng Gang Liu

Application No.: 10/523,439

Confirmation No.: 4460

Filed: January 28, 2005

Art Unit: N/A

For: ELECTROMAGNETIC RETARDER FOR A
VEHICLE PROVIDED WITH A SPEED
INCREASING UNIT

Examiner: Not Yet Assigned

Renewed Petition under 37 C.F.R. 1.10(d)

Dear Sir:

Reconsideration of the Decision on Petition issued February 21, 2006, is respectfully requested.

As set out in the decision, a copy of which is attached hereto as exhibit A, applicant's petition under rule 10(d) was denied on the basis that, although the certificate of express mailing was dated January 28, 2005, the hand-written "in date" on the customer copy of the "express mail post office to addressee" mailing label was January 29, 2005. Accordingly, the decision finds the submitted evidence unsatisfactory to prove January 28, 2005, as the date the correspondence was deposited in the "express mail post office to addressee" service prior to the last scheduled pick up for that day.

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2006 MAR 22
Intel. Legal Staff
Patent Division

The decision fails to address the fact, as noted in paragraph one of applicant's petition, that notwithstanding the hand written "date in" the stamped date on the customer copy of the express mail label is January 28, 2005. Accordingly, in light of the fact that the *stamped date* is January 28, 2005, and this date agrees with the date on the express mail certificate and on all other submitted documents, the hand written "date in" of January 29, 2005, is clearly an error.

Applicant submitted a copy of the customer copy of the express mail label with the original petition. Attached hereto as exhibit B is the original label, which shows the stamped date more clearly. Although the date is difficult to read due to interference between the red color of the stamp and the red color of the "delivery" box, the numeral "8" in the date "January 28 2005" is nonetheless unmistakable.

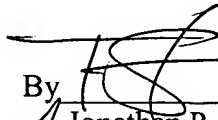
In further support of these facts, applicant provides as exhibit C a report from the US Postal Service, indicating acceptance of express mail label No. EV535680024US in Houston Texas at 4:57PM on January 28, 2005. Arrival to the pick up point in Alexandria Virginia occurred at 8:32AM on January 29, 2005. If the validity of this evidence is questioned, the legal examiner is encouraged to himself enter the label number into the USPS website (www.usps.com) and obtain this information directly. It is noted that the information on the USPS website is entered immediately and thus came into being within one business day of the deposit of the correspondence in the "express mail post office to addressee" service of the USPS.

Application No.: 10/523,439

Dated: March 17, 2006

Respectfully submitted,

By

 #45,079
Jonathan P. Osha THOMAS SCHERER

Registration No.: 33,986

OSHA · LIANG LLP

1221 McKinney St., Suite 2800

Houston, Texas 77010

(713) 228-8600

(713) 228-8778 (Fax)



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OSHA LIANG L.L.P.
1221 MCKINNEY STREET
SUITE 2800
HOUSTON TX 77010

Docketing	
Action:	Renewed Petition
Base Date:	2-21-06
Due Date:	4-21-06
Deadline:	4-21-06
Initials:	AKO
Att/Sec. Initials:	

In re Application of
LIU
Application No.: 10/523,439
PCT No.: PCT/FR03/02133
Int. Filing Date: 09 July 2003
Priority Date: 29 July 2002
Attorney's Docket No.: 17170/008001
For: ELECTROMAGNETIC RETARDER FOR A
VEHICLE PROVIDED WITH A SPEED
INCREASING UNIT

DECISION

This decision is in response to applicant's "REQUEST TO AFFORD FILING DATE UNDER 37 C.F.R. § 1.10" filed on 06 September 2005, which has been treated as a petition under 37 CFR 1.10(d).

BACKGROUND

On 09 July 2003, applicants filed international application PCT/FR03/02133, which designated the U.S. and claimed a priority date of 29 July 2002. A copy of the international application was communicated to the USPTO from the International Bureau on 26 February 2004. The thirty-month period for paying the basic national fee in the United States expired at midnight on 31 January 2005 (29 January 2005 being a Saturday).

On 29 January 2005, applicants filed a submission for entry into the national stage in the United States which was accompanied by, *inter alia*, the U.S. Basic National Fee.

On 09 August 2005, the USPTO mailed a NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating, *inter alia*, that an oath or declaration in compliance with 37 CFR 1.497(a)-(b) and the surcharge under 37 CFR 1.492(e) for filing the oath or declaration later than thirty months from the earliest priority date were required. This NOTIFICATION set a two month extendable period for reply.

On 06 September 2005, applicant submitted a response which included, *inter alia*, a declaration of the inventor and the surcharge under 37 CFR 1.492(e).

On 06 September 2005, applicant also submitted the instant REQUEST TO AFFORD FILING DATE UNDER 37 C.F.R. § 1.10", which has been treated as a petition under 37 CFR 1.10(d).

DISCUSSION

A review of the application papers located in the application file reveals that they were stamped with a receipt date of 29 January 2005. The "Express Mail" label number EV535680024US is shown on "Certificate of Express Mailing Under 37 CFR 1.10" which itemizes the items being filed. The copy of the Customer Copy of the "Express Mail Post Office to Addressee" mailing label accompanying the petition contains the same "Express Mail" label number.

The copy of the Customer Copy of Express Mail mailing label #EV535680024US shows a "Date In" of "12905".

37. CFR 1.10(d) states:

(d). Any person filing correspondence under this section that was received by the Office and delivered by the "Express Mail Post Office to Addressee" service of the USPS, who can show that the "date-in" on the "Express Mail" mailing label or other official notation entered by the USPS was incorrectly entered or omitted by the USPS, may petition the Commissioner to accord the correspondence a filing date as of the date the correspondence is shown to have been deposited with the USPS, provided that:

(1) The petition is filed promptly after the person becomes aware that the Office has accorded, or will accord, a filing date based upon an incorrect entry by the USPS;

(2) The number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by "Express Mail"; and

(3) The petition includes a showing which establishes, to the satisfaction of the Commissioner, that the requested filing date was the date the correspondence was deposited in the "Express Mail Post Office to Addressee" service prior to the last scheduled pickup for that day. Any showing pursuant to this paragraph must be corroborated by evidence from the USPS or that came into being after deposit and within one business day of the deposit of the correspondence in the "Express Mail Post Office to Addressee" service of the USPS.

The petition provides a satisfactory showing under 37 CFR 1.10(d)(1) and (2).

As to item (3), applicant has not provided a satisfactory showing. Applicant has provided only the copy of the Customer Copy of the "Express Mail Post Office to Addressee" mailing label #EV535680024US which includes a date-in of 29 January 2005. The petition states that applicant filed the application with the USPS by Express Mail on 28 January 2005 and that "the clerk at the U.S. Post Office errantly hand wrote the date on the receipt as January 29, 2005." However, no evidence from the USPS has been provided nor has any evidence that came into being after deposit and within one business day of the deposit of the correspondence with the

USPS been provided, as required by 37 CFR 1.10(d)(3). Accordingly, it is inappropriate, on the present record, to accord the international application an international filing date of 28 January 2005.

The petition urges that the Certificate of Express Mailing, Fee Transmittal, Application Cover Sheet, and Credit Card Payment Form are all date January 28, 2005. However, these documents only show an intent to file on that date; they are not evidence that the papers were deposited on that date.

CONCLUSION

For the reasons set forth above, applicant's petition under 37 CFR 1.10(d) is **DISMISSED** without prejudice.

If reconsideration on the merits of this petition is desired, a proper reply must be filed within TWO (2) MONTHS from the mail date of this decision. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.10(d)." No additional petition fee is required.

Please direct further correspondence with respect to this matter to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.



Daniel Stemmer
Legal Examiner
PCT Legal Affairs
Office of Patent Cooperation Treaty
Legal Administration
Telephone: (571) 272-3301
Facsimile: (571) 273-0459



EV 535680024 US

Mailing Label
Label 11-F June 2002



UNITED STATES POSTAL SERVICE® Post Office To Addressee

ORIGIN (POSTAL USE ONLY)				DELIVERY (POSTAL USE ONLY)			
PO ZIP Code		Day of Delivery <input type="checkbox"/> Next <input type="checkbox"/> Second		Flat Rate Envelope <input type="checkbox"/> Postage		Delivery Attempt Time <input type="checkbox"/> AM <input type="checkbox"/> PM	
Date In Mo. Day Year		<input type="checkbox"/> 12 Noon <input type="checkbox"/> 3 PM		Return Receipt Fee \$		Mo. Day Time <input type="checkbox"/> AM <input type="checkbox"/> PM	
Time In Mo. Day Year		Military		COD Fee Insurance Fee		Mo. Day Time <input type="checkbox"/> AM <input type="checkbox"/> PM	
Weight lbs. ozs.		<input type="checkbox"/> 2nd Day <input type="checkbox"/> 3rd Day Int'l Alpha Country Code		Total Postage & Fees \$		Mo. Day Time <input type="checkbox"/> AM <input type="checkbox"/> PM	
No Delivery <input type="checkbox"/> Weekend <input type="checkbox"/> Holiday		Acceptance Clerk Initials		Customer Signature		Employee Signature	

CUSTOMER USE ONLY	
METHOD OF PAYMENT: Express Mail Corporate Acct. No. Federal Agency Acct. No. or Postal Service Acct. No.	
FROM: (PLEASE PRINT) OSHA & MAY LLP ONE HOUSTON CENTER STE 2800 1221 MCKINNEY AVE HOUSTON TX 77010-2026 17170/008001 (TAH) (PB)	TO: (PLEASE PRINT) MAIL STOP PCT COMMISSIONER FOR PATENTS PO BOX 1450 ALEXANDRIA VA 22313-1450 PHONE 713 228 8600



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591500 1:02 1:12

Staci R. Tulley

From: U.S._Postal_Service_ [U.S._Postal_Service@usps.com]
Sent: Friday, March 03, 2006 2:32 PM
To: Staci R. Tulley
Subject: U.S. Postal Service Track & Confirm email Restoration - EV53 5680 024U S

This is a post-only message. Please do not respond.

Staci Tulley has requested that you receive this restoration information for Track & Confirm as listed below.

Current Track & Confirm e-mail information provided by the U.S. Postal Service.

Label Number: EV53 5680 024U S

Service Type: Express Mail - Post Office to Addressee

Shipment Activity	Location	Date & Time
Delivered	ALEXANDRIA VA 22313	01/31/05 8:53am
Arrival at Pick-Up-Point	ALEXANDRIA VA 22313	01/29/05 8:32am
Arrival at Unit	DULLES VA 20102	01/29/05 8:12am
Enroute	HOUSTON TX 77205	01/28/05 7:06pm
Acceptance	HOUSTON TX 77002	01/28/05 4:57pm

USPS has not verified the validity of any email addresses submitted via its online Track & Confirm tool.

For more information, or if you have additional questions on Track & Confirm services and features, please visit the Frequently Asked Questions (FAQs) section of our Track & Confirm site at <http://www.usps.com/shipping/trackandconfirmfaqs.htm>

[Track & Confirm](#)[FAQs](#)

Track & Confirm

Search Results

Label/Receipt Number: **EV53 5680 024U S**
Status: **Delivered**

Your item was delivered at 8:53 am on January 31, 2005 in
ALEXANDRIA, VA 22313. The item was signed for by S DYAR.

Additional information is stored in files offline.

A request to restore this information has been submitted and is currently
pending.

Notification Options

Proof of Delivery

Verify who signed for your item by email, fax, or mail. [Go >](#)

Track & Confirm

Enter Label/Receipt Number.

[Go >](#)

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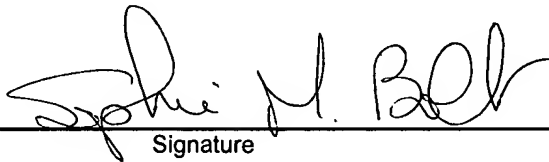
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Certificate of Express Mailing Under 37 CFR 1.10

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Alexandria, VA 22313-1450

on March 17, 2006
Date



Signature

Sophie M. Bolt

Typed or printed name of person signing Certificate

Registration Number, if applicable

(713) 228-8600
Telephone Number

Note: Each paper must have its own certificate of mailing, or this certificate must identify each submitted paper.

Petition under 37 CFR 1.10(d) (3 pages)

Attachments:

- Decision (Exhibit A) (3 pages)
- Express Mail Label (Exhibit B) (1 page)
- Report from the US Postal Service (Exhibit C) (2 pages)